

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CIVIL ACTION No. 1:12-cv-11817-GAO

NICHOLAS COX,
Plaintiff

v.

PAUL MURPHY, SEAN FLAHERTY,
BRIAN SMIGIELSKI, and THE CITY
OF BOSTON,
Defendants

**ASSENTED-TO MOTION FOR COURT ORDER ALLOWING THE IN-PERSON
DEPOSITION OF THE PLAINTIFF AT FCI RAY BROOK, OR IN THE
ALTERNATIVE, MOTION FOR THE COURT TO ISSUE WRIT OF HABEAS CORPUS
TO ALLOW PLAINTIFF'S DEPOSITION TO TAKE PLACE AT A DIFFERENT
CORRECTIONAL FACILITY**

Now come the Defendants and respectfully request that this Court Order the federal correctional facility, FCI Ray Brook, to allow for the taking of the deposition of the Plaintiff, Nicholas Cox. As grounds, the Defendants state as follows:

1. On October 1, 2012, Plaintiff brought the instant action pursuant to 42 U.S.C. § 1983 alleging, *inter alia*, that defendants Murphy, Flaherty, and Smigielski, violated his Fourth Amendment rights under the United States Constitution.
2. The parties are in the midst of discovery, which is scheduled to close on March 31, 2014.
3. Deposition have been scheduled by the parties to take place in mid-March, including the deposition of the Plaintiff, Nicholas Cox, which is presently scheduled for March 13, 2014.
4. Presently, the Plaintiff is incarcerated at FCI Ray Brook, which is in New York.

5. To coordinate the Plaintiff's deposition, defense counsel contacted FCI Ray Brook but was told by Plaintiff's case manager, Mark Levine, that an in-person deposition could not take place. Indeed, defense counsel was advised that a deposition could only occur over the phone and that a court reporter could not be present in the room with the Plaintiff during the deposition.
6. The Defendants object to being forced to take a phone deposition of the Plaintiff as it severely impairs defense counsel's ability to ask effective questions, visualize the plaintiff, ask follow up questions, and a phone deposition severely hampers the ability of the Court reporter to accurately record the deposition when he or she is not in the same room as the person being deposed. Furthermore, the Plaintiff alleges that he was injured as a result of his arrest and it prejudices the defense if defense counsel is unable to see Plaintiff's alleged injuries.
7. Moreover, correctional facilities routinely allow depositions of inmates who are either witnesses or parties to litigation.
8. Thus, the Defendants move for an Order compelling the prison officials at FCI Ray Brook to allow the attorneys for the Defendants, and a certified court reporter, to appear at the correctional facility to take Plaintiff's deposition on a date convenient for FCI Ray Brook, but prior to March 31, 2014.
9. In the alternative, the Defendants move to have the Court issue a writ of habeas corpus to have the Plaintiff moved to a separate facility, to be determined by the Court in conjunction with FCI Ray Brook, for the purpose of allowing the Defendants to take Plaintiff's deposition.

WHEREFORE, the Defendants respectfully move this Honorable Court to order the officials at FCI Ray Brook to allow for the Defendants' undersigned attorneys to appear at the correctional facility on or before March 31, 2014 and take the deposition of the Plaintiff, Nicholas Cox, with a certified court reporter. In the alternative, the Defendants request that this Court issue a writ of habeas corpus to have the Plaintiff, Nicholas Cox, brought to a different correctional facility, to be determined by the Court in conjunction with FCI Ray Brook, to allow defense counsel to take his deposition.

Respectfully submitted,

DEFENDANTS Paul Murphy, Sean Flaherty,
Brian Smigielski and the City of Boston

Assented to by,
PLAINTIFF NICHOLAS COX

William F. Sinnott, Corporation Counsel

By their attorneys:

/s/ Lisa Skehill Maki

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CERTIFICATE OF SERVICE

I, Amy Bratskeir, hereby certify that on this date I served a copy of this document via electronic filing on all counsel of record.

Date: 2/28/2014

/s/ Lisa Skehill Maki
Lisa Skehill Maki